



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

2005-403-C

177225

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA | GREENVILLE

December 28, 2005

Frank R. Ellerbe, III

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VIA E-MAIL & HAND DELIVERED

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Mr. Charles Terreni, Chief Clerk
Public Service Commission of South Carolina
Synergy Business Park
101 Executive Center Drive, Saluda Building
Post Office Drawer 11649
Columbia, SC 29211

**Re: Time Warner Cable Information Services (SC), LLC v Farmers
Telephone Cooperative, Inc.**

Dear Mr. Terreni:

Enclosed for filing please find Time Warner Cable Information Services (South Carolina), LLC's complaint against Farmers Telephone Cooperative, Inc. for violating 47 U.S.C. § 251(c)(1) by failing to negotiate in good faith in accordance with 47 U.S.C. § 252. Please stamp the extra copy provided as proof of filing and return it with our courier.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

/bds
enclosure

cc/enc: Julie Y. Patterson, Esquire (via e-mail & US Mail)
Ms. Charlene Keys (via email & U.S. Mail)
Florence Belser (via email & U.S. Mail)
John Bowen, Esquire (via email & U.S. Mail)
Margaret Fox, Esquire (via email & U.S. Mail)
Ms. Daphne Werts (via email)

BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA

Docket No. *2005. 403-C*

In re:)
)
Time Warner Cable Information Services)
(South Carolina), LLC, Complaint under)
47 USC § 251 against Farmers Telephone)
Cooperative, Inc.)
_____)

Time Warner Cable Information Services (South Carolina), LLC ("TWCIS"), through its attorneys and pursuant to Section 251 of the Communications Act (the "Act"), 47 U.S.C. § 251, and 26 S.C. Regs. § 103-835 hereby complains to the Public Service Commission of South Carolina ("Commission") that Farmers Telephone Cooperative, Inc. ("FTC") has violated 47 U.S.C. § 251(c)(1) by failing to negotiate in good faith in accordance with 47 U.S.C. § 252. In support of this complaint TWCIS states the following:

1. TWCIS was granted a certificate of public convenience and necessity ("Certificate") to provide service in certain areas of South Carolina. See Order No. 2004-213, Docket No. 2003-362-C, May 24, 2004.

2. Time Warner Cable Information Services (South Carolina), LLC is the legal name of the complainant. TWCIS' principal place of business is as follows:

Time Warner Cable Information Services (South Carolina), LLC
290 Harbor Drive
Stamford, CT 06902

3. Communications relating to this complaint should be directed to TWCIS' attorneys of record:

Frank R. Ellerbe, III
Bonnie D. Shealy
Robinson McFadden & Moore, P.C.
Post Office Box 944
Columbia, South Carolina 29202
Telephone: (803) 779-8900
Facsimile: (803) 252-0724
fellerbe@robinsonlaw.com
bshealy@robinsonlaw.com

and

Julie Patterson, Esquire
Time Warner Cable Information Services (South Carolina), LLC
290 Harbor Drive
Stamford, Connecticut 06902
Telephone: (203) 328-0671
Facsimile: (203) 328-4042

4. FTC is an ILEC that provides local exchange telephone service in its authorized territory in South Carolina. FTC's contact information is as follows:

John L. McDaniel
Chief Executive Officer
Farmers Telephone Cooperative, Inc.
Post Office Box 588
Kingstree, South Carolina 29556

and

M. John Bowen, Jr.
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211

5. TWCIS provides internet protocol local and long distance voice services to residential customers in South Carolina. In Order No. 2005-412 the Commission ruled that TWCIS possesses the ability as a telecommunications carrier under Section 251 of the Telecommunications Act of 1996 to enter into interconnection agreements with the rural incumbent local exchange carriers including FTC. Order 2005-412, p. 6, ¶ 1. TWCIS desires to enter into an interconnection arrangement with FTC in order to provide competitive telephone services in FTC's territory. In order to offer these services, TWCIS needs an interconnection

agreement with FTC pursuant to Section 251 of the Act so that it may obtain, among other things, the interconnection of facilities to send traffic to and receive traffic from FTC and telephone number portability.

6. Section 251(c)(1) provides that an ILEC has the duty to negotiate in good faith in accordance with Section 252 the terms and conditions of interconnection arrangements.

7. On July 29, 2005, TWCIS submitted a bona fide request for interconnection to FTC. *See Exhibit 1.* TWCIS subsequently sent a letter to FTC's counsel on December 14, 2005, when FTC failed to respond to TWCIS's bona fide request. *See Exhibit 2.* By letter dated December 16, 2005, and received by TWCIS on December 22, FTC responded – through its telecommunications consultant – to the second letter by refusing to negotiate with TWCIS on an interconnection agreement. *See Exhibit 3.*

8. In the December 16, 2005, letter FTC asserted that it would not negotiate an interconnection agreement with TWCIS because TWCIS was not a telecommunications carrier in areas served by FTC. TWCIS is informed and believes that FTC is relying on the fact that TWCIS is not certified as a telephone utility by this Commission in areas served by FTC. This position taken by FTC is at odds with previous rulings made by this Commission and supported by FTC. *See Order No. 2005-412 in Docket No. 2004-280-C* (“No expansion of the Company’s Certificate is needed for it to enter into negotiations with the RLECs.”); *See RLEC’s answer to TWCIS Petition for Judicial Review*, ¶s 14, 18, attached as *Exhibit 4.* By its pleading filed in Circuit Court supporting this Commission’s ruling that TWCIS is not required to be certified in order to negotiate an interconnection agreement, FTC is judicially estopped from refusing to negotiate with TWCIS on an interconnection agreement.

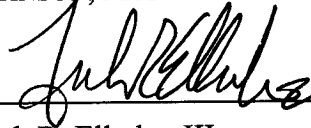
For the foregoing reasons, the Commission should enter an order:

- (1) Ordering FTC to immediately enter interconnection negotiations with TWCIS;

- (2) Establishing a timetable for FTC's immediate compliance with its interconnection obligations under federal law; and
- (3) Granting such other and further relief as may be appropriate.


Dated this 28th day of December, 2005.

ROBINSON, MCFADDEN & MOORE, P.C.



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Lori W. Foy



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COLUMBIA | GREENVILLE

July 29, 2005

VIA HAND DELIVERY

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fellerbe@robinsonlaw.com

**Re: Time Warner Cable Information Services (South Carolina), LLC
Farmers Telephone Cooperative, Inc. Interconnection Negotiations**

Dear John:

As counsel for and on behalf of Time Warner Cable Information Services (South Carolina), LLC ("TWCIS") and pursuant to Sections 251(a), (b), and (c) and 252 of the Telecommunications Act of 1996, this letter is being sent to you as counsel for Farmers Telephone Cooperative, Inc. ("Farmers") to provide notification to Farmers that TWCIS intends to engage in interconnection negotiations with Farmers for the State of South Carolina. Section 252 specifically sets forth that between the 135th and 160th day after a party has received a request for negotiations under the section, either party may request the Public Service Commission of South Carolina to initiate arbitration proceedings to resolve any open issues. TWCIS will treat the date of this letter as the starting point for determining the arbitration window.

Please contact me at (803)779-8900 upon receipt of this letter to establish a mutually acceptable date, location and agenda for our first meeting. TWCIS is looking forward to opening these interconnection negotiations and reaching closure on our relationship in South Carolina.

Yours truly,

ROBINSON, MCFADDEN & MOORE, P.C.

Frank R. Ellerbe, III

FRE/bds

cc: Julie Patterson, Vice President & Chief Counsel (via email)
Ms. Maribeth Bailey (via email)
Ms. Charlene Keys (via email)



ROBINSON MCFADDEN
ATTORNEYS AND COUNSELORS AT LAW

ROBINSON, MCFADDEN & MOORE, P.C.

COLUMBIA | GREENVILLE

December 14, 2005

VIA EMAIL AND U.S. MAIL

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fellerbe@robinsonlaw.com

**Re: Time Warner Cable Information Services (South Carolina), LLC
Interconnection Negotiations with Farmers Telephone Cooperative;
Home Telephone Co.; Ft. Mill Telephone Co.; PBT Telecom, Inc.; and
St. Stephens Telephone Co.**

Dear John:

I am writing to follow up on Time Warner Cable Information Services (South Carolina), LLC's July 29, 2005, requests for interconnection negotiations with Farmers Telephone Cooperative; Home Telephone Co.; Ft. Mill Telephone Co.; PBT Telecom, Inc.; and St. Stephens Telephone Co. (collectively, the "ILECs"). On October 19, 2005, you responded by letter on behalf of Home, Fort Mill, and PBT indicating that JSI would be negotiating on behalf of these three companies. To date we have not received a proposed interconnection agreement from JSI for any of these three companies. Farmers and St. Stephens have failed to respond to our requests. During our meeting on November 7th, you indicated that the ILECs would be responding to us soon. You also indicated that St. Stephens was unsure whether Time Warner Cable had facilities in its service area. Time Warner Cable has confirmed that we have facilities in St. Stephens' service area.

Time Warner Cable prefers to negotiate interconnection agreements with the ILECs that protects all parties' interests. However, if your clients are unwilling to engage in negotiations, we request that you notify us of their decision so that we may begin proceedings in the appropriate forum to resolve disputed issues. Since our window for arbitration is now open, please provide us with an interconnection agreement template for those ILECs who are willing to negotiate by Wednesday, December 21, 2005.



Brookside Court, Suite 135
4625 Alexander Drive, Alpharetta, GA 30022
phone: 770-569-2105, fax: 770-410-1608

December 16, 2005

Maribeth Bailey
Time Warner Cable Information Services
290 Harbor Drive
Stanford, CT 06902

Re: *TWCIS Request for Interconnection with PBT, Home, Farmers, Ft. Mill, and St. Stephen*

Maribeth:

We have reviewed the applicable state and federal rules and regulations regarding TWCIS' request for interconnection with PBT Telecom, Inc., Home Telephone Company, Inc., Farmers Telephone Cooperative, Inc., Ft. Mill Telephone Company and St. Stephen Telephone Company (collectively "RLECs"). While we are willing to continue discussions to negotiate an agreement for the exchange of traffic with TWCIS, particularly with respect to telecommunications services that TWCIS provides in those areas where it is a certified telecommunications carrier, we do not believe TWCIS' request falls within Section 251 of the Telecommunications Act because TWCIS does not appear to be a telecommunications carrier in the areas of the state served by the RLECs.

Finally, regarding St. Stephen, have you been able to investigate further where Time Warner Cable actually provides service in St. Stephen territory? I believe we discussed in our last meeting that St. Stephen is not aware of any Time Warner Cable facilities in its service area, and you were going to see if you could provide some more specific information on that.

Sincerely,

A handwritten signature in cursive script that reads 'J. Lans Chase'.

J. Lans Chase
John Staurulakis, Inc.

cc: PBT Telecom, Inc.
Home Telephone Company, Inc.
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
St. Stephen Telephone Company

7852 Walker Drive, Suite 200, Greenbelt, MD 20770
phone: 301-459-7590, fax: 301-577-5575
internet: www.jsitel.com, e-mail: jsi@jsitel.com

Echelon Building II, Suite 200
9430 Research Boulevard, Austin, TX 78759
phone: 512-338-0473, fax: 512-346-0822

Engandale Corporate Center, Suite 310
1380 Corporate Center Curve, Eagan, MN 55121
phone: 651-452-2660, fax: 651-452-1909

547 South Oakview Lane
Bountiful, UT 84010
phone: 801-294-4576, fax: 801-294-5124

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
Civil Action No. 2005-CP-40-5687

Time Warner Cable Information Services)
(South Carolina), LLC,)

Petitioner,)

v.)

Public Service Commission of South)
Carolina, Farmers Telephone Cooperative,)
Inc., Fort Mill Telephone Co., Home)
Telephone Co. Inc., PBT Telecom, Inc.,)
St. Stephen Telephone Co., South)
Carolina Telephone Coalition, and Office)
of Regulatory Staff,)

Respondents.)
_____)

**ANSWER OF FARMERS TELEPHONE
COOPERATIVE, INC., FORT MILL
TELEPHONE CO., HOME TELEPHONE
CO., INC., PBT TELECOM, INC., ST.
STEPHEN TELEPHONE CO., AND THE
SOUTH CAROLINA TELEPHONE
COALITION**

Farmers Telephone Cooperative, Inc., Fort Mill Telephone Co., d/b/a Comporium Communications, Inc., Home Telephone Co., Inc., PBT Telecom, Inc., St. Stephen Telephone Co. (collectively "RLECs"), and the South Carolina Telephone Coalition ("SCTC") respectfully submit this Answer to the Petition for Judicial Review of Time Warner Cable Information Services (South Carolina), LLC ("TWCIS"). RLECs and SCTC answer the Petition, and reply to the allegations set forth by TWCIS in its Petition, as follows:

1. RLECs and SCTC deny each and every allegation of the Petition not herein specifically admitted and demand strict proof thereof.

FOR A FIRST DEFENSE

2. Responding to Paragraph 1, RLECs and SCTC admit that the Public Service Commission of South Carolina ("the Commission") issued the named Orders and that this Court has jurisdiction to review final orders issued by the Commission.

3. Responding to Paragraph 2, RLECs and SCTC lack information or belief sufficient to admit or deny that TWCIS is a limited liability company organized under the laws of the State of Delaware. RLECs and SCTC admit that TWCIS currently holds a certificate to provide certain services in specified areas within the State of South Carolina, including the areas served by ALLTEL South Carolina, Inc., but note that the certification is for authority to provide telecommunications services.

4. Responding to the first sentence of Paragraph 3, RLECs and SCTC admit that they are respondents in this appeal, and admit that TWCIS has also named ORS and the Commission as respondents in this appeal, but lack information or belief sufficient to admit or deny that those other entities are proper respondents to this action. RLECs and SCTC admit the remaining allegation contained in Paragraph 3.

5. Responding to Paragraph 4, RLECs and SCTC admit that the Commission is an administrative agency of the State of South Carolina, and refer to S.C. Code Ann. § 58-3-5 *et seq.*, S.C. Code Ann. § 58-9-10 *et seq.*, and S.C. Code Ann. § 58-9-280 for a detailed description of the statutory duties and obligations of the Commission with respect to telephone utilities and issuance of certificates to provide services.

6. Responding to Paragraph 5, RLECs and SCTC admit that ORS is an administrative agency of the State of South Carolina, and refer to S.C. Code Ann. § 58-4-5 *et seq.* for a detailed description of the statutory duties and obligations of ORS with respect to public utilities.

7. RLECs and SCTC admit so much of Paragraph 6 as alleges that TWCIS filed two applications to amend its Certificate, purportedly on October 1, 2004, to provide service in the specified geographical areas. RLECs and SCTC disagree with TWCIS' characterization that the RLECs "opposed" the application, but admit that they asked the Commission to deny the

application, as filed, due to the ambiguity of the request, and because granting the application would not serve the public interest. RLECs and SCTC lack information or belief sufficient to admit or deny the nature of ALLTEL's position upon TWCIS' application relating to service in areas being served by ALLTEL.

8. With respect to the allegations contained in Paragraph 7, RLECs and SCTC aver that Commission Order 2005-385, including the findings and conclusions contained therein, speaks for itself.

9. RLECs and SCTC admit the allegation contained in Paragraph 8 to the extent that the Commission issued Order No. 2005-412 on August 1, 2005, denying TWCIS' application.

10. RLECs and SCTC admit so much of Paragraph 9 as alleges that TWCIS filed a petition for rehearing or reconsideration of Order No. 2005-412 and that the petition was purported to have been filed pursuant to S.C. Code Ann. § 58-9-1200 and 26 S.C. Regs. 103-836. RLECs and SCTC admit that the Commission denied TWCIS' petition for reconsideration in Order No. 2005-484, but lack information or belief sufficient to admit or deny the date of the receipt of such Order and, therefore, deny same.

11. RLECs and SCTC deny the allegations contained in Paragraph 10.

12. RLECs and SCTC deny the allegations contained in Paragraph 11.

13. Responding to Paragraph 12, RLECs and SCTC crave reference to Commission Order No. 2005-412 for the specific grounds cited by the Commission in denying TWCIS' application in that matter. RLECs and SCTC deny the remaining allegation.

14. Responding to the first sentence of Paragraph 13, RLECs and SCTC crave reference to the specific language within the Commission's Orders, but deny that the Commission's Orders denying TWCIS' original application and dismissing its modified application were in error. RLECs and SCTC deny the remaining allegations.

15. Responding to Paragraph 14, RLECs and SCTC admit that TWCIS' application was filed in October and that the *Vonage* order was issued in November (of 2004). Ms. Patterson's testimony and the record of the proceeding speak for themselves. RLECs and SCTC deny the remaining allegations contained in Paragraph 14.

16. RLECs and SCTC admit so much of Paragraph 15 as alleges that the Commission issued the named Orders granting TWCIS authority to provide certain services, but deny that any previously-filed applications "mirror" the requests contained in the application at issue in this matter. Moreover, the provision of services by TWCIS at issue in Order No. 2004-213 was subject to a stipulation entered into with SCTC, which provided that TWCIS would only seek to serve customers in areas in which the telephone company did not currently have a rural exemption. RLECs and SCTC admit that the Commission certificated TWCIS in ALLTEL's service area and crave reference to the pertinent Commission Order for the grounds relied upon by the Commission in issuing its Order. RLECs and SCTC deny the remaining allegations contained in Paragraph 15.

17. RLECs and SCTC deny the allegations contained in Paragraph 16.

18. RLECs and SCTC crave reference to the particular statutory provisions cited in Paragraph 17 for the accuracy of any citations or quotations, but deny that the Commission was erroneous in its interpretation of such provisions. RLECs and SCTC deny the remaining allegations contained in Paragraph 17.

19. Responding to the allegation contained in the first sentence of Paragraph 18, RLECs and SCTC deny that the Commission's Order is erroneous "as a practical matter," and further disagree with TWCIS' characterization of testimony presented on behalf of RLECs and SCTC and, therefore, deny same. RLECs and SCTC crave reference to the particular Agreements and filings cited by TWCIS for the accuracy of any citations or quotations, but deny

that they apply to the issues in this case. RLECs and SCTC deny the remaining allegations contained in Paragraph 18.

20. Responding to the allegations contained in Paragraph 19, RLECs and SCTC admit that the *Vonage* order is currently under appeal. RLECs and SCTC deny the remaining allegations.

21. Responding to Paragraph 20, RLECs and SCTC crave reference to the particular statutory provisions cited by TWCIS for the accuracy of any citations or quotations, but deny that such law applies in this case. With respect to the reference quoting specific language in Order No. 2005-412, RLECs and SCTC admit that the language substantially quotes accurately the Order, but disagree with TWCIS' characterization relating to such language and, therefore, deny same. RLECs and SCTC note that the specific language of Order No. 2005-412 as cited by TWCIS was not emphasized in any manner in the original Order. RLECs and SCTC deny the remaining allegations contained in Paragraph 20. RLECs and SCTC further note that although the Commission in Order No. 2005-412 referenced a discussion to rural exemption waivers, the Commission nevertheless clarified its position in its subsequent Order Denying Rehearing or Reconsideration (Order No. 2005-484) by stating that the companies' rural exemptions were not an issue in the proceeding and that Order No. 2005-412 should not be read as a ruling on a waiver of a rural exemption.

22. Responding to Paragraph 21, RLECs and SCTC deny that Order No. 2005-412 violates 47 U.S.C.A. § 253(a) of the federal Telecommunications Act. RLECs and SCTC crave reference to the particular decisions and cases cited for the accuracy of any citations or quotations, but deny that such law applies in this case and further deny the remaining allegations contained in Paragraph 21.

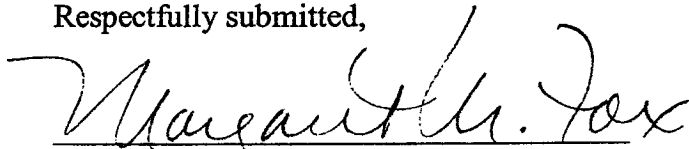
FOR A SECOND DEFENSE

23. The responses set forth in Paragraphs 1-22 above are reasserted as if set forth fully herein and are incorporated hereby by reference.

24. TWCIS has failed to state a cause of action against RLECs and SCTC upon which relief may be granted and TWCIS' Petition should, therefore, be dismissed.

WHEREFORE, having fully answered the Petition for Judicial Review, RLECs and SCTC respectfully request that the Court deny the relief sought by TWCIS in its Petition for the reasons stated herein and accordingly dismiss the Petition for Judicial Review, and that the Court order such other and further relief as is just and proper.

Respectfully submitted,



M. John Bowen, Jr.

Margaret M. Fox

Sue-Ann Gerald Shannon

McNAIR LAW FIRM, P.A.

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sshannon@mcnair.net

Attorneys for Farmers Telephone Cooperative,
Inc., Fort Mill Telephone Co., d/b/a Comporium
Communications, Inc., Home Telephone Co.,
Inc., PBT Telecom, Inc., St. Stephen Telephone
Co., and the South Carolina Telephone Coalition

November 30, 2005

Columbia, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT
Civil Action No. 2005-CP-40-5687

Time Warner Cable Information Services)
(South Carolina), LLC,)
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Petitioner,)
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v.)
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Public Service Commission of South)
Carolina, Farmers Telephone Cooperative,)
Inc., Fort Mill Telephone Co., Home)
Telephone Co. Inc., PBT Telecom, Inc.,)
St. Stephen Telephone Co., South)
Carolina Telephone Coalition, and Office)
of Regulatory Staff,)
)
Respondents.)
)

CERTIFICATE OF SERVICE

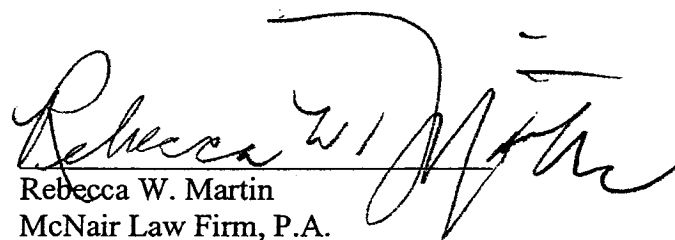
I, Rebecca W. Martin, do hereby certify that I have this date served one (1) copy of the Answer of Respondents upon the following counsel of record by causing said copy to be deposited with the United States Postal Service, first class postage prepaid and affixed thereto and addressed as follows:

Mr. Charles L. A. Terreni
Chief Clerk/Administrator
South Carolina Public Service Commission
Synergy Business Park, The Saluda Bldg.
101 Executive Center Drive
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November 30, 2005

Columbia, South Carolina